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REVIEW OF DEFERRAL

COMMUNICATION

FROM

THE COMPTROLLER GENERAL, THE GENERAL ACCOUNTING OFFICE

TRANSMITTING

A REVIEW OF THE MESSAGE FROM THE PRESIDENT PROPOSING THE DEFERRAL OF BUDGET AUTHORITY, PURSUANT TO 2 U.S.C. 686

FEBRUARY 25, 1986.—Referred to the Committee on Appropriations and ordered to be printed

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

February 25, 1986

B-220532

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives

Dear Mr. Speaker:

On February 5, 1986, the President's third special message for fiscal year 1986 was submitted to the Congress pursuant to the Impoundment Control Act of 1974. This letter is our report, as required by section 1014(b) of the Act, 2 U.S.C. § 685, on one deferral in that message, affecting budget authority for the Strategic Petroleum Reserve (SPR). We conclude, for the reasons given below, that of the $197.9 million deferred, the withholding of $156.8 million is not in accordance with existing statutory authority. We do not in this report question the deferral of the remaining $41,140,825 of budget authority. We are continuing to examine this deferral, and will advise you if we conclude that it, too, is impermissible under the Impoundment Control Act. We will report separately on the remainder of the third special message.

DEPARTMENT OF ENERGY

D86-37 Energy Programs
Strategic Petroleum Reserve
Amount Deferred: $197,940,825
89X0218

This deferral involves budget authority provided the Department of Energy (DOE) for the development, operation, and management of the SPR. This account was the subject of a deferral in fiscal year 1985. On February 6, 1985, the President announced a deferral of $270,738,000 in budget authority for the SPR (Deferral No. 85-31A). He explained that the deferred funds consisted of appropriations for the construction of crude oil storage facilities and resulted from his proposed indefinite moratorium on further development of the SPR. The President indicated that he would reassess the moratorium as fiscal and oil market conditions warrant.

In August 1985, however, the Congress passed and the President signed the Supplemental Appropriations Act for fiscal year 1985 expressly disapproving the deferral and directing that

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the funds be made available for obligation: "The Congress disapproves the proposed deferral D85-31A * * *. [T]he amount of the proposed deferral disapproved herein shall be made available for obligation." Pub. L. No. 99-88, 99 Stat. 293, 341 (1985).

The budget authority was made available shortly thereafter, and DOE issued an invitation for bids for SPR storage construction. DOE received bids on two contracts for the SPR's Big Hill storage site on December 13 and December 20, 1985. On December 27, DOE suspended award of these contracts. At the same time, DOE suspended receipt of bids scheduled for a third contract on January 21, 1986, delayed issuance of an invitation for bids for a contract for construction work at the Bayou Choctaw cavern, and directed its field office to terminate leaching activities at Bryan Mound and West Hackberry caverns. As a result, the funds have remained largely unobligated.

On February 5, 1986, the President reported the present deferral of $197,940,825 of budget authority for the SPR account. DOE has indicated that $156,800,000 of this amount is a redeferral of budget authority that was previously subject to the 1985 deferral proposal, D85-31A. As with his fiscal year 1985 deferral, D85-31A, the President reports in his February 5 special message that the pending deferral, D86-37, results from his proposed indefinite moratorium on further development of the SPR. The President states again, as he did in 1985, that he will reassess the moratorium as fiscal and oil market conditions warrant. In the meantime, he reports, the deferral will result in an indefinite curtailment of new storage facilities construction. He indicates that partially completed storage facilities will be mothballed, and completed facilities will be maintained in a state of standby operational readiness.

Section 1013(a) of the Impoundment Control Act of 1974 (the Act) (Pub. L. No. 93-344, 88 Stat. 332, 2 U.S.C. §§ 681, 684(a)) authorizes the President to defer budget authority until the end of the fiscal year in which the special message proposing the deferral is transmitted to the Congress. Deferred budget authority must be released for obligation earlier if either House of Congress passes an impoundment resolution disapproving the proposed deferral. The Act does not address the question of reimpoundment after a disapproval of an initial impoundment.

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We have not interpreted the Act as absolutely prohibiting reimpoundments. We evaluate reimpoundments on a case-by-case basis. In some circumstances, we have not objected to the reimpoundment of funds that were the subject of an earlier disapproved impoundment. See, e.g., B-217736, April 12, 1985; B-208140, October 29, 1982.

Recently, for example, we concluded that funds which had been deferred without success could be redeferred in the next fiscal year, pending congressional action on a proposal then before the Congress to permit a transfer of both the redeferred funds and funds appropriated for the same purpose which had not been deferred, to other appropriation accounts. The redeferred funds were insufficient to complete the project for which they had been provided (building a tunnel). We were persuaded that the redeferral presented the Congress with different alternatives and considerations than the first deferral, and made sense to avoid a wasteful result: if the transfer were approved by the Congress, thus indicating its agreement that the tunnel should not be built, it would have made little sense to require the obligation of the redeferred funds toward the project. B-217736, supra.

In another instance, we concluded that funds which had been proposed for rescission without success could be deferred pending the agency's decision regarding the most sensible use of the funds. B-208140, supra. In that case, the reason for the later deferral was fundamentally different from the reason for the earlier rescission proposal, when the President in effect proposed never to use the funds for any activity.

In our view, the redeferral here of $156.8 million, unlike the reimpoundments in B-217736 and B-208140, does not result from any changed circumstances. In fact the reason given for the redeferral is the same reason which the Congress considered and rejected in August 1985. The President stated in both cases that the deferral resulted from his proposed indefinite moratorium on further development of the SPR, and that he would reassess his moratorium as fiscal and oil market conditions warrant.[1/] As noted above, the Congress, after the first

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[1/] In explaining the present deferral, D86-37, the President also said, "These funds cannot effectively be used this year * * *." According to DOE officials, the only reason the funds cannot effectively be used this year is the President's indefinite moratorium. But for the moratorium, they said, the funds could be used.

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In its report on the fiscal year 1985 Supplemental Appropriations bill, which disapproved deferral D85-31A, the House Committee on Appropriations stated, "The long lead times necessary to construct and fill capacity require attention be given to future, rather than current, needs." H.R. Rep. No. 142, 99th Cong., 1st Sess. 107 (1985). The Committee pointed out that as a result of the deferral, the country would have no flexibility to deal with a crisis, and stated its expectation that construction recommence and that DOE adhere as closely as possible to previous schedules. Id. The Senate Appropriations Committee agreed with the House: "By concurring with the House and overturning the deferral, the Committee expects construction to restart immediately and adhere, as much as possible, to previous schedules." S. Rep. No. 82, 99th Cong., 1st Sess. 152 (1985).

The President, with the redeferral, is presenting the Congress with no new alternative or considerations; rather, he is asking the Congress to reconsider that which it has already thoroughly considered and rejected. Under these circumstances, it would be inconsistent with the purposes of the Act to allow the President to reimpound funds that were the subject of the previous impoundment. Taken to the extreme, such an approach would permit the President to withhold the funds indefinitely. This approach would negate the requirements of sections 1012(b) and 1013(b) of the Act to make budget authority available for obligation. We cannot interpret the Act in a way that effectively invalidates the procedures and safeguards that were established by its enactment.

Accordingly, we conclude that the redeferral of $156.8 million is not permissible under the Act and that the funds must timely be made available for obligation. We are advising the Secretary of Energy of our conclusion. We will monitor this account to assure compliance with the requirements of the Act.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C.

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